



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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DA 05-46

Released: January 7, 2005

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF CON EDISON COMMUNICATIONS, LLC TO FIBERNET TELECOM, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-1

Comments Due: January 21, 2005

Reply Comments Due: January 28, 2005

On December 21, 2004, ConEdison Communications, LLC ("CEC") and FiberNet Telecom, Inc. ("FiberNet") (together "Applicants"), pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ filed an application requesting authority to transfer control of CEC to FiberNet.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because neither the Applicants nor their respective affiliates are dominant with respect to any telecommunications service. As a result of the proposed transaction, FiberNet and its affiliates together will have market share in the interstate, interexchange market of substantially less than ten percent (10%); the transferee will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier in the U.S. that is not a party to the proposed transaction; and neither Applicant is dominant with respect to any domestic telecommunications service.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services as CEC also holds Section 214 authority to provide international services on a global resale basis. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

CEC is a New York limited liability company that builds and operates fiber optic networks to provide telecommunications services. It is a subsidiary of Consolidated Edison Communications Holding Company, Inc. (“CEC Holding Company”), which is a wholly-owned subsidiary of Consolidated Edison, Inc. (“CEI”). CEI, a New York corporation, is a publicly traded company (NYSE: ED) with its principal executive offices located at 4 Irving Place, New York, New York. CEC offers a comprehensive range of data and voice transport products and services designed to enhance the performance of its customers’ networks. CEC built and operates its own fiber optic network providing managed data transport services, custom networks, local and long distance voice services, and Internet access services. CEC serves local and long distance carriers, Fortune 1000 corporations, small and medium businesses, and Internet, cable, wireless, and video companies. It has authorization to provide domestic interstate services on a non-dominant basis in the following states: Connecticut, Delaware, Maine, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Washington, D.C.

FiberNet, a Delaware corporation, is a wholly owned subsidiary of FiberNet Operations, Inc., a Delaware corporation and an intermediate level holding company. FiberNet Operations, Inc. is a wholly owned subsidiary of FiberNet Telecom Group, Inc. (“FTG”), a publicly traded company (NASDAQ: FTGX) with its principal executive offices at 570 Lexington Avenue, New York, New York. FiberNet Operations, Inc. owns approximately 3.6 percent and FTG owns approximately 96 percent of the membership interests of Devnet L.L.C. (“Devnet”), a Delaware limited liability company. FiberNet also owns all of the outstanding membership interest of Local Fiber, LLC (“Local Fiber”), a New York limited liability company, and all of the outstanding membership interests of FiberNet Equal Access, LLC (“Equal Access”), also a New York limited liability company. FiberNet is a communications service provider focused on providing wholesale broadband connectivity for data, voice, and video transmission on its fiber optic networks in major metropolitan areas. FiberNet has established its primary operations in the New York and Los Angeles metropolitan areas and conducts its primary business operations through its operating subsidiaries and affiliates, Devnet, Local Fiber, and Equal Access. Local Fiber is authorized to provide both domestic and international interexchange services and holds an international Section 214 authorization to provide global facilities-based and global resale services.

Pursuant to a Stock Purchase Agreement (Agreement) between CEI and FTG, FTG will purchase for cash all of the outstanding shares of the capital stock of CEC Holding Company. As permitted by the Agreement, FTG will designate its subsidiary, FiberNet, as the entity that will receive the CEC Holding Company stock from CEI. CEC Holding Company thereafter will become a direct wholly-owned subsidiary of FiberNet, and CEC will become an indirect subsidiary of FTG through FiberNet.⁴

⁴ On or prior to closing of the proposed transaction, the name of CEC will be changed to FiberNet Enterprise Services, LLC and the name of CEC Holding Company will be changed to FiberNet Enterprise Services Holding Company, Inc.

Applicants assert that the proposed Transaction will serve the public interest in the following respects: (i) depth of management will be strengthened by the combination of management expertise and experience, (ii) as an affiliate of FiberNet, CEC will have access to the public capital markets which can provide support for the expansion of the services CEC offers; (iii) no service interruptions are contemplated; (iv) it will not change the existing terms or conditions of the services now being provided by CEC; and, (v) it will be transparent to the customers of CEC because the proposed transaction will be completed at the holding company level. CEC will continue to provide service to all of its existing customers without interruption, consistent with its existing tariffs and applicable law.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before January 21, 2005** and **reply comments on or before January 28, 2005**.⁵ Unless otherwise notified by the Commission, Applicants are permitted to transfer the stock and related control on the 31st day after the date of this notice.⁶ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in

⁵ See 47 C.F.R. § 63.03(a).

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Terri B. Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Terri B. Natoli at (202) 418-1574.

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